

Message Text

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ACTION L-01

INFO OCT-01 SS-14 ISO-00 EUR-08 SCA-01 SCCT-01 SSO-00 EB-03

SY-02 /031 W

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FM AMEMBASSY PARIS

TO SECSTATE WASHDC IMMEDIATE 8043

LIMITED OFFICIAL USE SECTION 01 OF 02 PARIS 08135

LIMDIS

E.O. 11652: N/A

TAGS: CPRS, PFOR, FR

SUBJECT: EXTRADITION - HOLDER/KERKOW

REF: STATE 72736; PARIS 8036

1. CONSUL GENERAL DISCUSSED HOLDER CASE ONCE AGAIN WITH NOEL MUSEUX OF QUAI'S LEGAL DEPARTMENT' MAKING POINTS REFTEL AS WELL AS OTHER LEGAL ARGUMENTS MADE IN PREVIOUS TELEGRAMS.

2. MUSEUX SAID HE HAD DONE SOME OF PREPARATORY WORK ON FRENCH POSITION VIZ A VIS HAGUE ANTI-HIJACKING CONVENTION. HE REFERRED TO FRENCH INSISTENCE ON DELETION WORD "OTHER" BEFORE "ORDINARY OFFENSE" IN ARTICLE 7 AND SAID THAT FRENCH BELIEVED HIJACKING COULD BE EITHER POLITICAL OR COMMON CRIME, DEPENDING ON CIRCUMSTANCES. CONSUL GENERAL REITERATED THAT WE DID NOT SEE HOW HOLDER HIJACKING COULD BE CONSIDERED POLITICALLY MOTIVATED UNDER ANY REASONABLE CRITERIA.

3. IN REPLY TO DIRECT QUESTION MUSEUX SAID IT WAS HIS OFFICE (LEGAL DEPARTMENT) WHICH WOULD DRAFT, FOR SIGNATURE OF MINISTER OR SECRETARY GENERAL, ANY COMMENTS COURTS MIGHT SOLICIT INTERPRETING EXTRADITION
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OR ANTI-HIJACKING TREATY OBLIGATIONS. HOWEVER' HE

HASTENED TO ADD THAT, IN RECENT YEARS ESPECIALLY, COURTS ALMOST NEVER (NOT EVEN IN THE FAMOUS BEN BARKA EXTRADITION CASE) ASKED FOREIGN OFFICE FOR OPINION. IN FACT, HE RECALLED ONE CASE WHERE COURT OF APPEALS ASKED FOREIGN OFFICE FOR INTERPRETATION ONLY TO HAVE SUPREME COURT CANCEL REQUEST. IN SHORT, ACCORDING TO MUSEUX, FRENCH COURTS CONSIDER THEMSELVES FULLY COMPETENT TO INTERPRET TREATIES AND INTERNATIONAL AGREEMENTS WITHOUT BENEFIT OF CONSULTATION WITH EXECUTIVE POWERS. THE COURT DID NOT, MUSEUX CONFIRMED, CONSULT FOREIGN OFFICE IN HOLDER CASE.

4. IF COURT DID NOT SOLICIT TREATY INTERPRETATION FROM FRENCH FOREIGN OFFICE IN HOLDER CASE, IT SEEMS UNLIKELY IT WOULD ENTERTAIN OPINION VOLUNTEERED BY U.S. GOVERNMENT. NONETHELESS, CONSUL GENERAL POSED QUESTION TO MUSEUX, WHO REPLIED THAT THIS ISSUE WAS RELATED TO ISSUE WE HAD RAISED WITH SCHMELCK OF JUSTICE MINISTRY RE PRESENTATION OF FACTUAL INFORMATION TO COURT AT THIS STAGE IN PROCEEDINGS. HE SUGGESTED WE ASK SCHMELCK.

5. SCHMELCK'S OFFICE TELEPHONED TONIGHT TO SAY THAT IF WE WANTED TO ADD ANY FURTHER EVIDENCE TO SUPPORT OUR CASE WE COULD SUBMIT IT BY MEMORANDUM TO DIRECTOR OF CRIMINAL AFFAIRS OF JUSTICE DEPARTMENT. HOWEVER, HE EMPHASIZED THAT WE HAD VERY LITTLE TIME, I.E., COUPLE OF DAYS. WE PLAN TRANSMIT SUBSTANCE OF DEPTTEL 57783 ON HOLDER'S MILITARY RECORD AND PROBABLY

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TO SECSTATE WASHDC IMMEDIATE 8044

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SOME OF BACKGROUND INFO. PROVIDED EARLIER BY FBI ON BOTH FUGITIVES. HOWEVER, WE NOTE DEPARTMENT'S DOUBTS, EXPRESSED PARA ONE OF REFTEL, RE DESIRABILITY OF SUBMITTING AT THIS TIME ADDITIONAL FACTUAL EVIDENCE AVAILABLE IN WASHINGTON. WE WONDER WHETHER THIS EVIDENCE, INCLUDING TAPES OF CONTROL TOWER CONVERSATIONS, HAVE PROVED LESS USEFUL THAN DEPARTMENT HAD AT FIRST THOUGHT. IN THIS CONNECTION WE WILL BE INTERESTED IN DEPARTMENT'S REPLY TO OUR 8036.

6. SUGGEST DEPARTMENT FORWARD SOONEST WRITTEN MEMORANDUM REFERRED TO IN NEXT TO LAST PARA OF STATE 72736. IF IT ARRIVES IN TIME, WE COULD FORWARD IT TO JUSTICE MINISTRY IN HOPE IT WILL BE ACCEPTED ALONG WITH FACTUAL MATERIAL.

7. MUSEUX SAID HE WILL PROBABLY BE IN HIS OFFICE SATURDAY MORNING. IF SO, HE WILL BE HAPPY TO RECEIVE DEPUTY LEGAL ADVISER FELDMAN. HOWEVER, WE CAUTION DEPARTMENT THAT IT WILL ALMOST SURELY BE TOO LATE BY THEN TO GET ANY INPUT INTO HOLDER CASE.

8. MINISTER STONE RAISED HOLDER CASE THIS AFTERNOON WITH FRANCOIS DE LABOULAYE, FOREIGN OFFICE DIRECTOR OF POLITICAL AFFAIRS. HE MADE MOST OF POINTS IN LIMITED OFFICIAL USE

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STATE 72736 AND PREVIOUS TELEGRAMS. LABOULAYE TOOK PARTICULAR NOTE OF LANGUAGE OF ARTICLE VI OF EXTRADITION TREATY ON MUTUAL ASSISTANCE WHICH MINISTER READ TO HIM. HE CALLED IN OFFICER OF AMERICAN DESK AND ASKED HIM TO LOOK INTO CASE AND SEE TO WHAT EXTENT FRENCH COULD BE OF HELP. MINISTER HAD IMPRESSION LABOULAYE WAS PERSONALLY SYMPATHETIC, ALTHOUGH HE POINTED OUT, OF COURSE THAT DECISION WAS IN HANDS OF COURT.

9. CONSUL GENERAL AND CIVIL AIR ATTACHE ALSO MADE DEMARCHE THIS AFTERNOON TO DIRECTOR GENERAL CIVIL AVIATION (BEING REPORTED BY SEPARATE TELEGRAM).
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